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FISCAL IMPACT STATEMENT

LS 6515

BILL NUMBER: SB 373

NOTE PREPARED: Jan 6, 2010

BILL AMENDED:

SUBJECT: Health Facility Third-Party Dispute Resolution.

FIRST AUTHOR: Sen. Becker

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
DEDICATED
☒ **FEDERAL**

IMPACT: State

Summary of Legislation: This bill establishes a third-party dispute resolution process that a health facility may use to appeal a deficiency finding in the health facility's Indiana State Department of Health (ISDH) survey report. The bill requires the ISDH to pay for a contract with an independent third party to conduct a third-party dispute resolution process.

The bill also requires the ISDH and the independent third party to collect and report specified statistical data to the Select Joint Commission on Medicaid Oversight and long-term care trade associations.

Effective Date: July 1, 2010.

Explanation of State Expenditures: This bill would require the ISDH to contract for a third-party dispute resolution process and pay the expenses of the contract from the Civil Money Penalty (CMP) Fund. This process would be in addition to the existing state-operated informal dispute resolution (IDR) process.

IDR findings made by a third party are recommendations only to the state agency; ISDH is required by CMS to review the findings and may accept or overturn the findings of an independent review. Additional cost would depend on the number of IDRs and the number of deficiencies that would be requested to be reviewed by the third-party reviewer, as well as the location of the IDR process. If a facility requests an on-site IDR as provided for in the bill, costs to the ISDH as well as to the contractor would be increased. If all facilities requested third-party reviews, cost could be incurred in a range of \$576,000 - \$864,000.

The bill provides that the costs are to be paid from the Civil Money Penalty Fund. This is a federally regulated state account that is not available for routine administrative purposes. If the ISDH uses CMP funds

for an unapproved use, it would be required to reimburse the funds with state dollars.

Background: Informal Dispute Resolution Process- The ISDH currently has two IDR processes. One process is an informal review by ISDH survey supervisors that may be an in-person review or a paper review. ISDH reported that there were approximately 144 surveys reviewed by this process in CY 2009. The second process is an independent review conducted by a Michigan company, MPRO. A facility may request a review by MPRO, but must bear the cost of the review. There was 1 survey reviewed by MPRO in 2009. ISDH estimated that the MPRO IDR costs \$2,000-\$3,000 per deficiency reviewed. (A survey may cite multiple deficiencies.)

There were 511 comprehensive care facilities and 105 freestanding residential care facilities in Indiana at the end of CY 2009. ISDH reported that during CY 2009, the results of IDRs conducted by the state included 39.9% of the deficiencies reviewed resulting in some sort of a change and 22.8% of the cited deficiencies were deleted. If all IDRs were requested to be performed under a third-party contract and included two deficiencies each, the annual contract cost could be expected to approach \$576,000 - \$864,000. The cost would be higher if a facility requests an on-site IDR, which the bill requires if it is requested. This provision would result in higher costs to the independent reviewer as well as the ISDH due to the travel costs. Costs would depend on the number of facilities that would request an on-site IDR.

Background: Civil Money Penalty Fund- The bill provides that expenses of the voluntary third-party dispute resolution process are to be paid from the nonreverting CMP Fund administered by the ISDH. If ISDH uses the CMP Fund to pay for routine administrative expenses of the regulatory program, the Centers for Medicare and Medicaid Services (CMS) could demand the funds be reimbursed with state funds.

The CMP Fund is a state fund administered by the state, pursuant to federal law and regulation. The Social Security Act created a fund that returns a portion of the civil money penalties collected from health facilities back to the state. The state's use of the CMP Fund is limited to uses for the protection of the health and property of nursing facility residents that the state or the CMS find to be deficient. Money may be used to pay for the costs of relocation of residents to other facilities, state maintenance of the operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds or property lost as a result of actions by the facility or individuals used to provide services. CMS guidelines further state that projects funded by the CMP Fund should be limited to funding on hand and should be relatively short-term projects. CMP funds are not to be spent on direct care costs, but rather should be used to promote better care through the reduction of deficient practices at health facilities. The balance of the CMP Fund was \$2.5 M as of January 4, 2010.

Explanation of State Revenues: See *Background: Civil Money Penalty Fund* for revenue explanation.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: ISDH.

Local Agencies Affected:

Information Sources: ISDH; CMS, State Survey Agency Directors letter, Ref: S&C-03025, Ref: S&C-05-

10, and 42 CFR 488.442(g) (1994).

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